

No. 15,328

United States Court of Appeals  
For the Ninth Circuit

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RALPH F. STALLMAN,

*Appellant,*

VS.

CASEY BEARING COMPANY, INC., a corporation, and T. W. CROSBY,

*Appellees.*

APPELLANT'S OPENING BRIEF.

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## APPELLANT'S OPENING BRIEF.

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### JURISDICTIONAL STATEMENT.

Appellant's action for patent infringement arises under Title 35, Section 271, United States Code. It is an action on the case for damages for patent infringement.

Jurisdiction of the District Court is authorized by Title 28 United States Code, Section 1338.

The jurisdiction of this Honorable Court to review the judgment rendered in the United States District Court is found in Title 28 United States Code, Section 1291.

**ABSTRACT OF THE CASE.**

This appeal is prosecuted after adverse judgment rendered by the trial Court (Vol. I, pp. 34, 35).

The jury rendered a verdict holding claims 3, 4, 5 and 9 of the patent in suit valid and infringed (Vol. I, p. 13). Defendant moved pursuant to rule 50 (b) of the Rules of Civil Procedure for judgment notwithstanding the verdict (Vol. I, p. 15). The Court granted defendant's said motion (Vol. I, pp. 27-35).

The sole question raised by this appeal goes to the propriety of the trial Court's granting defendant's motion for judgment as a matter of law.

In its opinion (Vol. I, p. 27) the trial Court directed judgment for defendant notwithstanding the verdict, stating:

"Thus, solely from the comparison of the prior art with the teaching of plaintiff's patent, without weighing the testimony of any witnesses, expert or otherwise, the only reasonable conclusion that can be drawn is that the patent is invalid."

It is appellant's duty to point out that the "comparison of the prior art" with the teaching of plaintiff's patent in disregard of the testimony herein led the trial Court to mistaken interpretation of the showing of the prior art, and that a fair consideration and comparison of the patent in suit and the prior art will show that the structure of the patent in suit performs a new and unobvious function and result, and that invalidity was not "the only reason-

able conclusion'' that could be drawn, and further that there was sufficient evidence to raise a question of fact as to the comparison of the prior art and the patent in suit and as to whether the subject matter of the claims of the patent in suit as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains (Title 35, Section 103, United States Code).

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#### **FACTUAL STATEMENT.**

Ralph F. Stallman, appellant-plaintiff, had over twenty five years practical experience on bearings exclusively. He was employed at one time by SKF Industries, one of the biggest ball and roller bearing manufacturers (Vol. I, page 261).

Roller bearings in general connect a pair of relatively rotating parts. For instance when a shaft rotates in a stationary support, a bearing in the support surrounds the shaft so as to reduce friction during the rotation of the shaft. Such roller bearing usually has an outer race held stationary in the support and an inner race on the circumference of the shaft. The rollers rotate between said races generally parallel with the shaft. In other applications the shaft is stationary and the outer race rotates e. g. with a pulley.

Among other bearings with which Stallman was concerned during his activities as a bearing engineer and salesman was the so-called needle bearing in



which the rollers are relatively long and narrow (Vol. II, p. 286, Fig. 6). Excessive friction due to misalignment of such rollers had been a problem in the bearing industry for many years and various attempts were made to obviate this evil (Vol. I, pp. 172, 173, 185, 186, 188).

Sometime in 1941 Stallman invented the solution for this long vexing problem by providing a guide ring or rail on the stationary race of the bearing, and providing each roller with a reduced portion and groove adapted to ride on the stationary ring or rail. The groove or reduced portion of the Stallman roller is wider than the ring or rail so as to leave a space to permit skewing of the roller when subjected to unbalanced forces (Vol. I, p. 214). Thus the roller instead of resisting such unbalancing forces on the bearing and producing increased friction, yields to such unbalance and the loaded side of the roller advances faster than the other side until the shoulder of the reduced portion or groove of this advanced side strikes the stationary guide ring or rail and is held back by the ring or rail until the other side of the roller catches up, and thus correct the skewing. This action is a continuously repeated self-correction of the rollers and prevents the locking of such bearings as a result of excessive skewing (Vol. I. pp. 46-60, 86, 87, 97).

Stallman showed his novel bearings made in accordance with his Patent No. 2,334,227 (Vol. II, p. 286), to Crosby, the president of defendant corporation, and upon Crosby's recommendation Stallman



approached McGill Manufacturing Company (Vol. I, pp. 60, 61). This resulted in a 10% royalty agreement with McGill Manufacturing Company under the Stallman patent in 1948 (Vol. I, p. 62).

Stallman turned over about thirty of his own customers to McGill Manufacturing Co. and to Defendant Casey Bearing Company, the California distributor for McGill (Vol. I, p. 68). The Stallman bearing was and is a success (Vol. I, pp. 62, 64, 65, 115). But in 1950 after some negotiations, upon the advice of McGill's patent counsel that the Stallman patent was invalid, the agreement with Stallman was terminated (Vol. I, p. 255).

After the termination of the agreement, however, McGill and Defendant Casey Bearing Company did not abandon the Stallman bearing, but only removed the patent number which theretofore appeared on the bearings and drawings (Vol. I, p. 62), and continued the manufacture and sale of Stallman bearings to date with increasing success (Vol. I, p. 115). This left Stallman with one customer (Vol. I, p. 71). Stallman served notice of infringement on McGill and on Defendant Casey Bearing Company, but without avail and this suit followed. The defendant Casey Bearing Co. now sells in California alone thousands of such bearings each month (Vol. I, p. 115).

**THE INVENTION.**

The Stallman patent is simple and is well defined for instance in Claim 5 of the patent.

A bearing comprising

- (a) a revolving race and
- (b) a relatively stationary race
- (c) a plurality of rolls interposed between said races and,
- (d) having reduced portions intermediate their ends,
- (e) means carried by the stationary race only and projecting into the reduced portion of the rolls to engage shoulders formed by said reduced portions
- (f) in the event of misalignment of the rolls.

Stallman's basic concept was that instead of trying to hold the rollers against the skewing force and misalignment, the rollers are permitted to skew under the unbalancing forces until the shoulder of the reduced portion nearer the advanced side of the roller engages the stationary projecting ring or rail; and then the skewing force is utilized to retard the advanced side of the roller until the other or trailing side of the roller advances sufficiently to straighten the position of the roller and thus disengage the shoulder from the stationary projection or rail. This is repeated over and over again during such unbalanced condition of the bearing, but it performs with materially less friction than the devices which are trying to hold the rollers spaced or aligned constantly

against the skewing forces. Thus the locking of such roller bearing is positively prevented.

This was explained to the jury repeatedly and experiments were conducted to demonstrate the conflicting contentions of the parties.

The Court summarized to the jury this issue concisely in its instruction, as follows:

“In order that one of these patents may be granted by the Patent Office of the United States—and the Patent Office is the agency through which the government acts in passing upon these patents—it must appear from these claims that are set forth in the patent that the patentee has discovered something that has originality and novelty over and beyond what has theretofore been discovered and recorded in the Patent Office, which the lawyers have spoken of and called the prior art.

The particular patent that is involved in this case is what is commonly described as a combination patent. The plaintiff here has asserted in his claims an arrangement or combination of various elements which he says is something new in that it is an improvement over that which has gone before in that particular field. He doesn't claim that he invented any of these various elements that go to make up the combination, but that the arrangement that he has made of them and in the particular form that he sets forth in his complaint accomplishes a purpose beyond that which has heretofore been accomplished and is an improvement of a substantial nature over that which has gone before.

An applicant for a patent can not get a patent merely because he aggregates or puts together elements that have already been discovered. He must produce, as a result of his aggregation or bringing together of these elements, a combination which the law says entitles him to a patent because of the novelty and the improvement over the prior art which that particular aggregation of the so-called elements produces.

To illustrate that to you: What is involved in this case, as the lawyers have told you, is something that involves roller bearings. We have all heard the expression ball bearings probably more frequently, but these are rollers rather than balls.

The plaintiff in this case does not claim that the roller is something new; that the slot in the roller is something new; that the track upon which this proceeds in the rolling operation is something new, or that it operates between an outer and an inner surface which the lawyers have called races—none of those things he claims is new.

As I understand the contentions of the parties in this case, the principal contention of the plaintiff as to the originality of the claims of the patent is that this track on which the roller operates is fixed—the track is fixed to it and it remains immovable, whereas the other container, the inner container, may be movable. The chief claim that he makes is the rigidity or firmness of this outside container in which the roller bearing rolls over a fixed sort of a track.

The other side contends that that is not a novelty and that it is disclosed in these other patents that have been referred to.

So the principal direction that your efforts, in my opinion, should take in this case is that you should consider what the records and the testimony show in this case and determine whether or not this claim of the plaintiff in that regard is something that is new and novel. And in determining that, devoting your efforts to that consideration, you should bear in mind that the test as to invention or novelty as laid down by our Courts is this: that if that which has been developed or claimed to have been invented goes beyond what the ordinary artisan skilled in that particular field of mechanics could do, then it amounts to invention, and if it is not something more than the ordinary artisan or skilled—person skilled in that particular work would produce as a result of his general knowledge—if it is not something more than that, then it is not invention.” (Vol. I, pp. 270-273).

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### **SPECIFICATION OF ERRORS.**

1. The Trial Court erred in overruling the jury's verdict that the differences between the subject matter of the claims of the patent in suit and the prior art are such that the subject matter as a whole would not have been obvious at the time the invention was made to a person having ordinary skill in the art to which such matters pertain.

2. The Trial Court erred in considering the comparison of prior patents with the claims in suit of plaintiff's patent as a question of law, although the



same comparison is a question of fact on which the jury's verdict is final.

3. The Trial Court erred in disregarding that there is evidence of sufficient substantiality to support a verdict in favor of plaintiff, and in disregarding the rule of law that the jury's verdict is final on questions of fact and that conflicting evidence is for the jury and not for the Court on motion for directed verdict or for judgment notwithstanding the verdict.

4. The Trial Court erred in holding that the only reasonable conclusion that can be drawn from the comparison of the prior art with the teaching of plaintiff's patent is that the patent is invalid.

5. The Trial Court erred in its ruling that plaintiff's contribution to the art did not advance the frontiers of science in the narrow field of bearings so as to satisfy the exacting standards of our patent system.

6. The Trial Court erred in ruling as a matter of law that the claims of the patent in suit are invalid.

7. The Trial Court erred in setting aside the verdict of the jury and entering judgment in favor of defendant.

The rule governing nonsuits, directed verdicts, and judgments notwithstanding the verdict is clearly defined.

“In a jury trial of a patent case, the same rules prevail as in ordinary cases. There is no special exception simply because an alleged patent is involved.”

*Hansen v. Safeway Stores*, 238 F. 2d 336, 339.

“As was said in *Slocum v. New York Life Insurance Co.*, 1913, 228 US 364, 368-387, 335 S. Ct. 523, 57 L. Ed. 879:

‘But without a waiver of the right of trial by jury, by consent of parties, the Court errs if it substitutes itself for the jury, and, passing upon the *effect of the evidence*, finds the facts involved in the issue and renders judgment thereon.’ (Emphasis added.) The situation just alluded to by the *Slocum* case was where a verdict had been reached but the judgment had been set aside.”

*Guerrero v. American Hawaiian Steamship Co.*,  
222 F. 2d 238, 243.

“But where the evidence is conflicting or there is insufficient evidence to make only a ‘one-way’ verdict reasonably possible, a directed verdict is improper.”

5 *Moore’s Federal Practice*, Sec. 50.02, 2316.

“In ruling on the motion the trial Court views the evidence in the light most favorable to the party against whom the motion is made. On appeal, likewise, the appellate court must consider the evidence in its strongest light in favor of the party against whom the motion for directed verdict was made, and must give him the advantage of every fair and reasonable intendment that the evidence can justify.”

5 *Moore’s Federal Practice*, Sec. 50.02, 2316.

“In reviewing judgment n. o. v. for defendant, the appellate court of course applies the familiar rule that all facts which plaintiff’s evidence reasonably tends to prove and all favorable infer-



ences fairly deducible from those facts, must be assumed in support of the verdict.”

5 *Moore's Federal Practice*, Sec. 50.13, 2346.

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### THE PRIOR PATENTS.

The trial Court in its opinion passed upon certain physical similarities between three prior patents and the Stallman patent and disregarded factual evidence as to the differences in function and result.

Each of the prior patents considered by the trial Court has an inner race, an outer race, rollers between the races, and reduced portions on the rollers into which projects a rib or rail from the rotating race.

But a detailed consideration of these prior patents will indicate that all of these prior patents intended to resist skewing by holding the rollers as rigidly as possible in parallel position, and none permitted the utilization of the unbalancing skewing force to advance one side of the roller and then by action of the adjacent shoulder of the reduced portion on the stationary guide ring or rail to return the roller to parallel position.

Appellant here takes up the prior patents on which the trial Court relied as anticipation in the same order as discussed by the trial Court.

**THE HEIM PATENT.**

The object of the Heim patent was solely to prevent endwise movement of the rollers in a roller bearing in a special application, where the ring rotates with the hub of the wheel in which the outer race is held.

Heim's intention to hold each roller tight is expressed throughout that patent.

The Heim patent on page 1, lines 67 to 71 states:

“When the rolls are inserted into the device this inwardly projecting portion of the ring fits into a portion of the groove 15 of each of the rolls and prevents endwise movement of such rolls.”

On page 2, lines 29 to 34, the Heim patent declares unqualifiedly:

“The ring 16 remains in the position described and continues to prevent any endwise movement of the rollers relative to the shaft or to the parts 12, 12 of the device 11.”

On page 2, lines 64 to 67, the Heim patent again declares:

“In this case it is advisable to make the groove 23, corresponding to the groove 15 of Figure 3, likewise substantially square in cross-section so that it will closely fit about the ring.”

Thus the Heim patent leaves no doubt that the purpose of Heim was to hold the rollers without any play. Consequently, the rollers are not permitted to utilize unbalancing or skewing forces for first advancing the heavier loaded side and then utilizing the leverage on

the shoulder in contact with the ring or rail for straightening again the roller position.

The ring of Heim holds the rollers, not on the stationary race, but on the rotating race of the bearing and the device is locked in place by outside supports (Heim patent, p. 2, lines 15-20).

This Heim patent was a file wrapper reference and was considered during the prosecution of the application for the Stallman patent.

Consequently, the viewpoint of the Trial Court in comparing the Heim patent with the Stallman patent overrules the Patent Office point of view as well as that of the jury.

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#### **THE KEMPSTER PATENT NO. 585,580.**

This Kempster patent illustrates another approach to prevent the locking of such bearings.

Kempster expressly provided such bearings for sheaves or wheels which rotate on a shaft and deliberately placed a "rib" in the rotating hub or race to project into a groove around the middle of each roller.

Kempster intends to hold the rollers "positively in proper alignment" by the rib. But Kempster's main teaching is the provision of an anti-friction separator disk held in the grooves of each pair of adjacent rollers to space the rollers apart. These roller separators are supposed to keep the rollers in proper operating positions. (Vol. II, p. 295, lines 85-95).

In such a construction if the rollers were permitted to skew in the manner of the Stallman patent, the grooves would be angled and the separator disks would be tightly bound "so as to completely destroy the antifriction qualities of the device". (Kempster patent p. 2, line 73).

This Kempster patent is not a file wrapper reference in the Stallman patent, but as it will appear, the same type of bearing was considered by the Patent Office in the Kempster Patent, No. 747,324 next to be discussed herein.

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#### **THE KEMPSTER PATENT NO. 747,324.**

This Kempster patent as its main object proposes to definitely confine the rollers in "their proper relative positions". In other words, any skewing of the rollers in this Kempster device again would be contrary to the contemplation of this patentee. In fact, as explained above in connection with the earlier Kempster patent any skewing of the rollers would cause the slanting of the groove in the roller and as a result would tightly bind the separator disks and lock the bearing.

The difference between this Kempster patent and the previous Kempster patent is the provision of two tracks or two annular ribs, namely one projecting from the inner race and the other from the outer race.

This double track concept of Kempster is defined in Claim 6 of the patent without the spacer disks. But

such double track structure again does not utilize the skewing forces for advancing one side of the roller under load to apply the force through the adjacent groove shoulder against the ring and use that frictional force for straightening the roller. This Kempster patent prohibits such action and attempts to "hold" the rollers in their proper positions by two track ribs. (Kempster patent, p. 2, lines 69 to 82).

The Trial Court's interpretation that Figures 4 and 5 of this patent suggest central guide rib "only" on the inner race is an error, because outer ring (9a) in each of those forms is definitely intended as a guide and track. (Kempster patent p. 2, lines 40 to 57).

This Kempster patent was a reference considered by the Patent Office before the Stallman patent was granted, hence the Trial Court's opinion overrules the Patent Office as well as the verdict of the jury.

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**THE INTERPRETATION OF THE PRIOR PATENTS BY THE TRIAL COURT DECIDES QUESTIONS OF FACT WHICH OUGHT NOT BE RESOLVED IN THE ABSTRACT AND WITHOUT THE TESTIMONY AND DEMONSTRATIONS PRODUCED AT THE TRIAL.**

This Honorable Court recently reiterated the well established rule:

"The issue as to whether there subsists in a device upon which letters patent have issued novelty, utility and invention is one of fact. This explains the allowance of a jury trial in such a case. Under the Constitution, a jury trial cannot be denied if one of the parties demand it."

*Hansen v. Safeway Stores*, 238 F. 2d 336, 339.



The comparison of the prior patents with the Stallman patent merely shows that all refer to bearings and have certain physical characteristics in common. But a combination of old elements still amounts to invention if it performs a new and useful function.

Upon the record as a whole, there was sufficient evidence to raise a question of fact as to whether the Stallman patent performed a new and useful function by a combination of these elements known in the prior art.

*Hansen v. Safeway Stores*, supra, p. 340.

Stallman testified that Heim was not concerned with the problem of skewing (Vol. I, pp. 76, 77). Also that when the guide is on the rotating part the bearing will operate "for a short time but it will be full of friction" (Vol. I, p. 78); and "It will run sluggish, it will cause wear in the bearing, it will cause heat in operation, it will create many of the undesirable things in the antifriction bearing field." (Vol. I, pp. 78, 79).

Stallman further testified that when the guide rail is on the rotating part "the ring 15 would wobble engaging the shoulder 14 and 14 on both sides the roller alternately carrying the roller with it, and inducing skewing which we are trying to prevent." (Vol. I, pp. 79, 80).

As to the distinctive function and result of the Stallman combination, testimony was directly in conflict. Stallman testified as to the application of forces and results. (Vol. I, pp. 46-60, 86, 87, 96, 97, 99).

Defendant's expert, Dr. Spotts, a professor of mechanical engineering at Northwestern University maintained that the bearings did not operate the way Mr. Stallman testified (Vol. I, p. 164) and that skewing is "not important" (Vol. I, p. 168), and that engagement by a shoulder as in Stallman would not correct skewing (Vol. I, p. 169). He even endeavored to demonstrate this to the jury. (Vol. I, pp. 170 to 184).

Dr. Spotts at least conceded that the skewing was a "problem". (Vol. I, p. 188).

Dr. Spotts further conceded that the Heim patent is the closest to the Stallman patent (Vol. I, p. 241). Heim, however, was cited and considered by the Patent Office in granting the Stallman patent.

A review of the prior patents and other evidence in the record, therefore, indicates that there are questions of fact as to whether the Stallman patent is valid or had been exemplified in previous devices. Such a review must also reveal that there is substantial evidence to sustain the contentions of plaintiff and the verdict of the jury.

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**THE JURY'S VERDICT THAT THE STALLMAN PATENT WOULD NOT HAVE BEEN OBVIOUS AT THE TIME IT WAS MADE TO A PERSON HAVING ORDINARY SKILL IN THE ART IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND OUGHT NOT BE SET ASIDE.**

The trial Court instructed the jury very plainly as to the test to determine the presence or absence of



invention in the Stallman patent. (Vol. I, pp. 270-273).

This criterion for invention is the rule in Title 35 United States Code, Section 103.

Obviousness must be determined by comparisons and facts.

At the trial of this case Dr. Spotts, defendant's expert, conceded the existence of the problem (Vol. I, pp. 172, 173, 188), but disagreed that the Stallman patent solved that problem. (Vol. I, p. 168).

On the other hand Stallman testified that his solution to the long vexing problem was successful (Vol. I, pp. 54, 86, 87, 96).

The issue of obviousness was thus resolved by the jury on conflicting evidence, comparisons and contentions and there were substantial grounds for the verdict.

Since the rule was first stated by the Supreme Court in *Hotchkiss v. Greenwood*, 11 How. 248, 267, 13 L. Ed. 683, the question of whether the improvement is beyond the skill and ingenuity of a mechanic, or a man skilled in the art, was consistently treated as a question of fact and not a question of law.

In *Reinharts, Inc. v. Caterpillar Tractor Co.*, 85 F. 2d 628, at 630, this Court reiterated the rule:

“Appellant's brief states: ‘The validity of the claims at issue of plaintiff's Cappelli's patents depends upon whether the structures they define, when compared with the prior art structures, result from the exercise of invention or merely

from mechanical skill of those versed in the art.' The question thus presented is one of fact." (citing cases).

As heretofore demonstrated, the prior patents and Stallman patent are not the kind that can be compared in the abstract, they must be considered in their practical industrial environment, as the jury considered them, and the trial Court erred in treating such comparison as a question of law for the Court and in resolving all inferences from the prior art against the verdict.

In the abstract the difference between the Stallman patent and the prior patents may appear to be simple, especially in hindsight, but when considered in the light of the apparent long struggle of the industry with the problem until successfully solved by Stallman, the real stature of the difference becomes evident.

The trial Court ought to have drawn inferences in accordance with the admonition of this Court stated in *Patterson-Ballagh Corp. v. Moss*, 201 F. 2d 403, at page 406:

" . . . It is quite apparent that simplicity alone will not preclude invention. Hindsight tends to color the seeming obviousness of that which in fact is true contribution to prior art. 'Knowledge after the event is always easy, and problems once solved present no difficulties, indeed, may be represented as never having had any, and expert witnesses may be brought forward to show that the new thing which seemed to have eluded the search of the world was always ready at hand and easy to be seen by a merely skillful attention.' "

**CONCLUSION.**

The issues raised and decided by the Trial Court were issues of fact within the province of the jury. The Trial Court in granting the motion notwithstanding the verdict substituted itself for the jury and passed upon the effect of the evidence and found the facts involved in the issues. Reasonable men (the jury in this case) came to a conclusion contrary to that of the Trial Court. Inasmuch as all favorable inferences fairly deducible from the facts herein should be assumed in support of the verdict, the Trial Court was in error.

We respectfully submit to your Honors that under such circumstances the decision was for the jury, and the judgment of the Court notwithstanding the verdict should be reversed.

Dated, San Francisco, California,  
February 25, 1957.

Respectfully submitted,

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